
**IN THE
SUPREME COURT OF MISSOURI**

No. SC84213

IN RE ANCILLARY ADVERSARY PROCEEDING QUESTIONS

**Cole County
Case No. CV194-24CC**

**APPEAL FROM THE COLE COUNTY CIRCUIT COURT
HONORABLE WARD B. STUCKEY
SPECIAL JUDGE**

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JURISDICTIONAL STATEMENT

The trial court, in its Order and Judgment, determined that inasmuch as Art. IV, § 15, Mo. Const., restricts the duties that may be imposed upon the State Treasurer to those relating to “the receipt, investment, custody and disbursement of state funds and funds received from the United States government” and inasmuch as “the funds in questions (sic) are not state funds or funds received from the United States,” the “Treasurer has no standing or right to assert claims against the funds in Case No. CV194-24” (L.F. 274; App. A to this Brief). In effect, the trial court held Section 447.575, RSMo, authorizing the State Treasurer to take actions to collect unclaimed property was unconstitutional because it assigned such duty to the State Treasurer contrary to the provisions of Art. IV, § 15, Mo. Const. Because the validity of a statute is involved, this Court has exclusive jurisdiction of this appeal under Art. V, § 3, Mo. Const.

INTRODUCTION

The appeal in this case, SC84213, involves legal issues that are common to those issues in SC84210, as well as in SC84211 and SC84212. The Points on Appeal raised by Appellant Nancy Farmer in each of her four appeals are virtually identical.

Respondent Receiver Sharon Morgan, in this appeal, is in a similar position to Respondent Receiver Julie Smith in SC84210, Respondent Trustee Elaine Healey in SC84211 and Respondent Receiver Jackie Blackwell in SC84212. Respondents Morgan, Smith, Healey and Blackwell are represented by the same counsel in these four appeals. Oral arguments with respect to these four appeals are being consolidated.

There are some factual differences in the underlying cases below which may or may not need to be reached, depending upon what issues may ultimately be determined by the Court to be dispositive insofar as the appeals are concerned. Consequently, it is appropriate that the Statement of Facts in this Brief of Respondent Morgan set forth separately those facts which are relevant to this case in the trial court and this appeal.

In other respects, for Respondent Morgan to simply set forth the same arguments and authorities in this Brief as those set forth in the Brief of Respondent Smith in SC84210 results in the expenditure of more time by the Judges of this Court in reading and considering Briefs, as well as another “tree being cut” to provide the necessary paper.

Consequently, Respondent Morgan incorporates by reference the statements, authorities and arguments set forth in the Brief of Respondent Smith in SC84210 into this Brief. Where additional statements, authorities or arguments to those contained in the Brief of Respondent Smith in SC84210 are appropriate, they are hereinafter set forth.

STATEMENT OF FACTS

The Commencement of the Case and Stay Order

On December 17, 1993, the Missouri Public Service Commission (“PSC”) entered a Report and Order which ordered a reduction in Southwestern Bell Telephone Company’s (“Southwestern Bell’s”) revenue requirement by \$84 million; rejected Southwestern Bell’s TeleFuture 2 plan; and ordered Southwestern Bell to file tariffs implementing the Report Order by January 1, 1994. Following a denial of its Application for Rehearing, Southwestern Bell filed its Petition for Writ of Revenue and for Stay on January 11, 1994 in the Circuit Court against the PSC which was docketed as Case No. CV194-24CC. L.F. 7, 13.

Numerous parties intervened or appeared in the case, including the Office of Public Counsel, the State of Missouri by the Attorney General, Midwest Independent Coin Payphone Association, MCI, United Telephone Co. of Missouri, AllTel Mo., Inc., Burbeuse Telephone Co., GTE, and Mid-Mo Group of Telephone Cos. L.F. 8, 18. On February 4, 1994, following a hearing on that date the Honorable Thomas J. Brown, III, entered an Order Granting Stay which, *inter alia*, provided for a stay of the PSC’s Report and Order of December 17, 1993, ordered that on a monthly basis Southwestern Bell pay into the registry of the Court by wire transfer the funds which it had collected in excess of the amounts authorized by the PSC’s Report and Order, ordered Southwestern Bell to make provisions for notices to customers, and imposed other requirements. L.F. 18. The Office of the Public Counsel, the Missouri Attorney General and various telecommunication companies appeared and participated in the February 4 hearing. L.F. 18.

On December 30, 1993, Southwestern Bell had filed Case No. CV193-1666CC and had secured on that date a temporary restraining order and stay of the December 17 Report and Order

during the pendency of the Application for Transfer Proceedings. The monies collected pursuant to the December 30 stay order and Case No. CV193-1666CC were consolidated into Case No. CV194-24CC. L.F. 17, 20.

Order Appointing First Receiver

On February 17, 1994, Judge Brown entered an Order Appointing Receiver which found that substantial monies would be coming into the Court registry which would need to be held for a lengthy period of time, found that it was not fair to impose upon the Circuit Clerk the additional responsibilities associated with the monies, and found that the monies should be held and invested as provided in Section 483.310, RSMo, and Missouri Supreme Court Rule 68.02. The Order appointed Elaine Healey as Receiver of the funds in Case Nos. CV194-24CC and CV193-1666CC, directed her to perform those administrative duties under Section 483.310 with respect to the funds which would, absent the appointment of a Receiver be performed by the Circuit Clerk, directed that the provisions of Section 483.310 continue to govern the investment of the funds, reserved investment decisions to the Court, provided for a bond for the Receiver, authorized a monthly fixed payment to the Receiver for her services, authorized the Receiver to pay expenses of less than \$500 and directed that the Receiver receive Court approval before disbursing any other funds or interest thereon. L.F. 26-28.

On March 7, 1994, three other cases which had been filed with respect to the PSC's Report and Order of December 17, 1993, were consolidated into Case No. CV194-24CC. L.F. 8. An Amended Order Granting Stay was entered on March 21, 1994. L.F. 9, 29. The parties, including the "Intervenor State of Missouri", filed briefs with the Court. L.F. 9-10.

Settlement of the Rate Litigation

On August 31, 1994, the Office of Public Counsel advised the Court that a settlement had been

reached between Southwestern Bell, the PSC and the Office of Public Counsel; that such settlement would result in dismissal of Southwestern Bell's Petition for Review. The August 31 letter advised that the settlement was subject to certain contingencies and that the settlement terms were being shared with the intervenors. Public Counsel stated that it was not yet known whether the settlement would result in a dismissal of the AT & T and Missouri Cable TV Association Petitions for Review. L.F. 277, 39.

The August 31, 1994, settlement provided for refunds of those amounts above revised tariffs to be filed by Southwestern Bell to effectuate certain agreed provisions, provided for a standstill for a period of time before Southwestern Bell could file a general rate case, provided for certain services to be upgraded and provided certain minimum investments by Southwestern Bell. L.F. 279.

The Refund Process

On October 7, 1994, Judge Brown entered an Order Approving Distribution of Stay Funds. L.F. 37. This Order directed Southwestern Bell to file a plan with the Court for a distribution of the funds and set forth certain requirements for the refund plan, including payment of interest and subsequent filings by Southwestern Bell. L.F. 40. In its Report filed with the Court on December 5, 1994, Southwestern Bell reported that it had paid \$62,802,873 into the Court and that \$61,731,778 in refunds were owed by Southwestern Bell to customers, with the difference being funds to which Southwestern Bell was entitled. L.F. 301.

On December 5, 1994, Judge Brown entered an Order Directing Distribution of Stay Funds which provided as a part of the refund procedure that certain funds be distributed by the Receiver to Southwestern Bell and to certain "individual carriers". L.F. 46. During the period of December 5 through 28, 1997, the record reflects that there were various motions with respect to disbursements and reports of disbursements by the Receiver filed with the Court. L.F. 10-11, 311-335.

On March 9, 1995, Southwestern Bell filed its Second Report which reported generally with respect to refunds and submitted checks to the Court as follows:

- Check for \$206,792.22 “representing credits due customers who have not been located by [Southwestern Bell] as of March 20, 1995”.
- Check for \$24,192.37 “representing credits due customers who have not been located by the other local exchange carriers who have assisted in the process”.
- Check for \$113,874 which “represents sums which were due certain customers as part of the refund but which were not rendered”. The Second Report explains that the “computation of the elapsed days for the refund period¹ understated the correct refund amounts by one day for each customer” and that the cost of crediting customer bills and issuing refund drafts of these amounts would be “prohibitive”.

L.F. 336, 337, 338. Copies of this Report were forwarded to counsel for the parties, including the Office of Public Counsel and the Attorney General. L.F. 342-343.

On June 29, 1995, Southwestern Bell reported that further refund drafts totaling \$27,101.54 by Southwestern Bell and \$642.71 by local exchange carriers had been requested, and requested reimbursement from the monies transmitted with its Second Report on March 9, 1995. L.F. 349.

Copies of this Request went to counsel for the parties, including the Office of Public Counsel and the Attorney General. L.F. 357, 358. A further more detailed explanation and accounting was provided by Southwestern Bell to Judge Brown and the parties (including the Office of Public Counsel and the Attorney General) by letter of July 12, 1995. L.F. 359-364. By letter of July 17, 1995, Judge Brown

¹ The refund period was from January 1, 1994, through September 30, 1994. L.F. 280.

raised issues with respect to the refund process with Southwestern Bell, and on August 4, 1995, Southwestern Bell responded to those issues by filing its Supplemental Report Relating to Customer Refunds, with copies thereof being provided to counsel, including the Office of Public Counsel and the Attorney General. L.F. 365-374. In that Supplemental Report Southwestern Bell detailed the refund procedures followed, the computerized programming required and noted, *inter alia*:

- The types of service involved were “touchtone, toll, coin phone usage and switched access”.
- The “computerized refund process calculated refunds for nearly 2 million Missouri customers”.
- The computerized refund process involved Southwestern Bell facilities located in Missouri, Kansas and Oklahoma which served Missouri residents.
- The computerized refund process, “from development to reprocessing, took 3 months to complete”.

L.F. 367.

Southwestern Bell filed a Second Request for Reimbursement on September 28, 1995, which reported and requested a \$42.31 adjustment in the amount of refunds through other local exchange carriers set forth in the First Request, requested an additional \$7,152.83 reimbursement for refund drafts honored by Southwestern Bell between June 1 and August 31, 1985, and requested an additional \$8,400.14 reimbursement for refund drafts honored by local exchange carriers between June 1 and August 31, 1985. Copies of the Second Request for Reimbursement went to counsel for the parties, including the Office of Public Counsel and the Attorney General. L.F. 375-384.

On October 25, 1995, Judge Brown approved the reimbursement of refunds as set forth in the

First and Second Requests. L.F. 385.

A Third Request for Reimbursement for honoring \$3,544.18 in Southwestern Bell refund drafts and for honoring \$9,639.66 in other local exchange carrier drafts was filed by Southwestern on December 26, 1994 (L.F. 388), and on December 28, 1995, Judge Brown entered an order approving the requested reimbursement of refunds. L.F. 395.

Closure of First Receivership

On January 22, 1996, Southwestern Bell filed a Motion to Close Receivership, which provided:

“COMES NOW Southwestern Bell Telephone Company (SWBT) and moves the Court to close the receivership initiated on or about December 30, 1993 and redirect all remaining funds into the general accounts of the Circuit Court on the following grounds:

“1. All material terms associated with the Order Approving Distribution of Stay Funds executed by the Court on or about October 7, 1994 appear to have been satisfied in full.

“2. To the best of SWBT’s knowledge and belief, the receivership contains the following funds as of January 16, 1996:

Principal \$281,001.09

Interest \$13,191.50

Balance \$294,192.59

“In consideration of the foregoing, SWBT moves the Court to close the receivership and redirect the remaining funds into the general accounts of the Circuit Court.”

L.F. 398. Copies of this were sent to counsel for all parties, which would have included the Office of Public Counsel and the Attorney General. L.F. 399. On January 26, 1996, Judge Brown entered an Order Closing Receivership and Transferring Funds Into General Accounts of the Circuit Clerk which found and provided –

- The Court granted the Motion to Close Receivership.
- The Court found that “all material terms associated with the Court’s Order Approving Distribution of Stay Funds dated October 7, 1994, have been satisfied”.
- The Court directed “that all remaining funds contained in the present receivership shall be redirected into the general accounts of the Circuit Court.” (emphasis added).
- The Court found that the funds involved totaled \$294,192.59.
- The Court recognized that Southwestern Bell was continuing “to honor customer refund drafts presented for payment and will continue to do so until such time [that Southwestern Bell] determines that the volume of individual customers has decreased to an acceptable level that will not compromise customer service”. The Court further held that “further requests for reimbursement by [Southwestern Bell] during 1996 will be granted by this court and should be directed to the court. . . .”

L.F. 48-49.

No Action By Public Counsel, State of Missouri or Attorney General to Modify Order Closing First Receivership and Limiting Rights to Funds to Southwestern Bell for One Year

Except for the limited interest of Southwestern Bell to seek reimbursement from those funds for

and refund drafts that might be honored in 1996 by Southwestern Bell or other local exchange carriers acting for it, any rights or interests of any persons or entities to the \$294,192.59 in funds were extinguished by the entry of this Order Closing Receivership. The record does not reflect that any party or counsel to the proceedings, including the Office of Public Counsel, the State of Missouri or the Attorney General, ever took any action to seek to modify this Order by action in the Circuit Court or by appeal or original writ proceedings. L.F. 1-12.

The first Receiver, Elaine Healey, on January 26, 1996, directed Central Trust Bank to transfer all funds in her account to the Cole County Circuit Clerk. L.F. 56.

The Second Receivership

On January 26, 1996, Judge Brown then entered an Order Transferring Funds and Appointing Receiver in which he appointed Sharon Morgan as Receiver of the monies referred to in the Order closing the first receivership. In that Order the Court found:

“ . . . [T]he court has concluded as well that the expense of administering those monies held now in the registry of the court should be funded from the funds themselves and, in particular, from the interest being generated from the investment of those funds. . . .

“ . . . [T]he responsibility for administering those funds now falls upon the undersigned judge. . . .

“ . . . [T] court further does not believe that it is fair to impose upon the circuit clerk herself the additional responsibilities that are engendered by a close monitoring of the investment of those funds

“ . . . [T]he court . . . intends that these responsibilities be exercised only by

someone in who this court has complete confidence and also by one who is readily available to the court . . .

“ . . . [T]he court believes as well that the investment decisions with respect to those funds should be retained by the court itself. . .” L.F. 404-405.

The Court then considered the provisions of Rule 68.02 authorizing a circuit court to appoint a receiver to “keep, preserve and protect” monies which are deposited in this court in this cause. L.F. 405-406.

The Court’s Order directs:

“2. That, as such receiver, she is directed to perform those administrative duties which, absent the appointment of a receiver, would be performed by the circuit clerk under the provisions of Section 483.310, RSMo, with the provisions of Section 483.310, RSMo, henceforth, continuing to govern the investment of funds and the application of interest received from the fund.

* * *

“4. That the court reserves unto itself the final investment decisions

* * *

“6. . . . [T]hat interest received from such investments shall be paid over directly to the receiver From such interest which is received the receiver shall first pay therefrom the lawful expenses of the administration of the funds . . . ; there shall next be paid therefrom such amounts as may be lawfully requisitioned by the Circuit Clerk of Cole County. . . and the remaining balance shall be paid into the general revenue fund of Cole County as provided in subsection 2 of section 483.310 RSMo. . . .

“7. That the receiver is directed to secure and maintain a bond. . . .

“8. That the receiver is authorized and directed to pay over to herself personally from such interest so received the sum of Two Hundred Fifty Dollars (\$250.00) compensation for her services as receiver. . . .

“9. That until further order of the court the receiver is authorized to from time to time pay such other expenses in the administration of the receivership as may from time to time be necessary; provided, however, (a) that no such expenditure for such other expenses in excess of \$250 shall be made without the written approval of the court. . . .” L.F. 407-409.

Further Requests for Reimbursement by Southwestern Bell

On July 15, 1996, Southwestern Bell filed a fourth request (dated July 9) for reimbursement of additional customer refund drafts which it had honored totaling \$4,452.01. L.F. 412. On July 16, 1996, Judge Brown entered an Order Approving Fourth Request for Reimbursement in the amount of \$4,452.01. L.F. 417. The Receiver transmitted that amount to Southwestern Bell by wire transfer on July 17, 1996. L.F. 419.

By letter dated as of January 1, 1997, and filed on January 3, Southwestern Bell submitted a fifth request for reimbursement of \$351.98 for customer refund drafts which it or other local exchange carriers honored. L.F. 420. On January 14, 1997, Judge Brown entered an Order which approved Southwestern Bell’s Fifth Request for Reimbursement for additional customer refund drafts honored in 1996. L.F. 427. On January 15, 1997, the Receiver wired those funds to Southwestern Bell. L.F. 429. The record does not reflect any additional requests for reimbursement by Southwestern Bell. L.F. 1-12.

Collection and Administrative Duties Imposed on State Treasurer in 1993

Since July 1, 1993, Section 447.575, RSMo 1994 (and 2000), has provided that the State Treasurer has the duty to collect unclaimed property subject to the Unclaimed Property Act and to then generally administer the Act. See generally, Section B of House Bill 566 enacted in 1993.

Proceedings Re the Unclaimed Property Act

The Circuit Court files and the record reflect that neither the Missouri Director of Economic Development, the Missouri State Treasurer, the Missouri State Auditor nor the Missouri Attorney General made any claim or assertion prior to January 4, 2000, that the funds held by the Receiver in Case No. CV194-24CC should be paid over to the Director of Economic Development or the State Treasurer as unclaimed property pursuant to the Unclaimed Property Act. Earlier audits of the Cole County Circuit Court had been conducted by the State Auditor. On January 4, 2000, State Auditor Claire McCaskill issued Audit Report No. 2000-01 with respect to the Nineteenth Judicial Circuit in which she “. . . recommended the circuit judges review these receivership cases and determine whether the receivership assets should be distributed to the state Unclaimed Property Section or should be disposed of in another manner” (Emphasis added, Appellant’s Brief, App. 2).

On April 30, 2001, the Attorney General filed a Petition for Writs of Prohibition and of Mandamus in the Western District of the Missouri Court of Appeals styled “State ex rel. Jeremiah W. (Jay) Nixon, Attorney General, Relator v. Cole County Circuit Judges Byron L. Kinder and Thomas J. Brown, III, Respondents”, and docketed as Case No. WD 59910, requesting the issuance of writs directing that the funds and interest thereon in this case and the three companion cases be transferred to the State Treasurer pursuant to the Unclaimed Property Act. L.F. 432, 64. Prior to the filing of the Petition in the Court of Appeals, the Attorney General did not seek relief by motion or petition filed in this case or in the three companion cases. State Treasurer Farmer advised Judges Kinder and Brown

that the action in the Court of Appeals was filed by the Attorney General without consulting with or notifying the State Treasurer. The State Treasurer further advised Judges Kinder and Brown that she had no claim to any interest on the funds. L.F. 432-433. On May 3, 2001, Judges Kinder and Brown appointed Alex Bartlett as counsel for the Receivers and Trustee in this case and the three companion cases, directed that he file opposing suggestions in the Attorney General's action in the Court of Appeals, directed that he attempt to negotiate a settlement and authorized him to take additional necessary or appropriate actions. L.F. 434-435. The Attorney General's Petition for Writs of Prohibition and Mandamus in the Western District of the Missouri Court of Appeals was denied on May 30, 2001. L.F. 64.

On June 28, 2001, the Attorney General filed a quo warranto action against Judges Kinder and Brown in the Osage County Circuit Court which was docketed as Case No. 01CV330548, with notice being given by telephone that morning to attorney Alex Bartlett in Jefferson City. At noon on the same day the Attorney General presented the Petition in Case No. 01CV330548 to Circuit Judge Jeff W. Schaperkoetter in Union in Franklin County. The Attorney General secured the issuance of a Preliminary Order in Quo Warranto which deviated from Supreme Court Form 12 and provided that Judges Kinder and Brown "are restrained and enjoined from appropriation or expending" any of the funds in this case and the three companion cases. L.F. 65. The Attorney General's appeal from the dismissal of that case by Circuit Judge Gael Wood now pends in this Court as SC84301.

By letter dated July 16, 2001, the Attorney General, on behalf of the State Treasurer, demanded that Respondent Morgan deliver the funds she holds as Receiver in this case to the State Treasurer by 5:00 p.m. on July 20, 2001, or face a personal penalty of up to \$10,000 per day. L.F. 74-75, 65-66. At that time, Respondent Morgan, under the provisions of the Order was prohibited

from making such a disbursement, and Judge Brown was prohibited by the Preliminary Order in Quo Warranto from entering any order effecting an appropriation or expenditure of the funds. L.F. 65-66.

On July 20, 2001, Respondent Morgan filed her “Motion and Petition for Joinder of Additional Parties and for Relief in an Ancillary Adversary Proceeding in the Nature of Interpleader and for Other Relief” (“Motion and Petition”). L.F. 61. A copy of the Motion and Petition is set forth as Appendix D to this Brief at A-20. In her Motion and Petition the Respondent Receiver noted the contentions of the Attorney General, the July 16 demand to turn over the funds which she held, the extant orders of the Court which prevented her from doing so and the extant order in the Quo Warranto action against Judges Kinder and Brown which prevented them from entering any order transferring the funds. L.F. 65-66. The Respondent Receiver further reported that efforts to settle the disputes with the State Treasurer had been thwarted by the Attorney General. L.F. 66. The Respondent Receiver asserted that the Court is not required to turn over the funds to the State Treasurer pursuant to the Unclaimed Property Act, but instead has authority to make a different disposition of the funds. L.F. 70.

The Respondent Receiver requested that the Court direct that there be separate ancillary adversary proceedings to determine the following questions:

- “a. Whether the interest income upon the funds in this case for as long as they are held by the Receiver or under the control of the Court can be used (i) to pay the expenses incurred in preserving the funds, and (ii) to pay court-related expenses as provided in Section 483.310, RSMo; and (iii) whether the remainder of the interest income monies are payable to Cole County.
- “b. Whether the funds in this case must be distributed now or whether they can continue to be held in the registry of the Court.

“c. If it is determined that the funds can no longer continue to be held in the registry of the Court, whether the funds must be disbursed to the State Treasurer to be administered under the Missouri Uniform Disposition of Unclaimed Property Act or whether the Court can make a different disposition of the funds.”

L.F. 71-72.

The Motion and Petition requested that the proceedings be denominated as “Ancillary Adversary Proceedings”, that no other questions be considered in the Ancillary Adversary Proceedings, and that if it was determined that the funds in this case were not required to be disbursed to the State Treasurer pursuant to the Unclaimed Property Act, the continued holding or the disposition of the funds be determined in further proceedings. L.F. 72.

The Motion and Petition asked that the State Treasurer, the Circuit Clerk and Cole County be joined as parties in the Ancillary Adversary Proceedings to assert any claims they might have to the funds. L.F. 72. The Motion and Petition noted that in *Crist v. ISC Financial Corp.*, 752 S.W.2d 489 (Mo. App. W.D. 1988), it had been held that the Circuit Clerk and Cole County (L.F. 71) were indispensable parties when the matter of interest on funds, held under the Circuit Court’s authority, were in question.

On July 20, 2001, Judge Brown entered an Order which sustained the Motion and Petition of the Receiver. L.F. 76-79. A copy of that Order is set forth as Appendix E to this Brief at A-36. That Order provided:

“2. A separate trial and proceedings are hereby ordered with respect to the Ancillary Adversary Proceedings Questions as defined in the Receiver’s Motion and Petition, which shall be known as the Ancillary Adversary Proceedings and shall be captioned as

[In Re Ancillary Adversary Proceedings Questions]. . . .

“3. The only issues for determination in the Ancillary Adversary Proceedings shall be the Ancillary Adversary Proceedings Questions . . . and the joinder . . . shall not make such person or entity a party for any other purpose in this case.

“4. The Honorable Nancy Farmer as State Treasurer of Missouri, is hereby ordered added as a party to the Ancillary Adversary Proceedings, and it is further ordered (i) that a copy of this Order and the Receiver’s Motion and Petition be served upon the Honorable Nancy Farmer . . . , (ii) that the . . . State Treasurer within 30 days of such service file . . . a pleading asserting any claims which she . . . has under the . . .

Unclaimed Property Act to the funds in this case. . . .

“5. Cole County and Ms. Debbie Cheshire as the . . . Circuit Clerk are hereby added as parties to the Ancillary Adversary Proceedings. . . .

“6. The Receiver . . . through her attorney . . . is hereby authorized and directed to participate in the Ancillary Adversary Proceedings to insure that there is a full presentation and exposition of the facts and legal issues. . . .

“7. . . . [O]ther persons . . . may be allowed to intervene . . . as an interested person or to appear as *amicus curiae*. . . .” (Emphasis added) L.F. 77-78.

In his July 20, 2001, Order, Judge Brown noted the pendency of the quo warranto action in the Osage County Circuit Court. He then recused himself from a determination of the Ancillary Adversary Proceedings Questions for which a separate trial and proceedings had been ordered, requested that the Supreme Court assign a Special Judge to hear and determine the Ancillary Adversary Proceedings Questions and “retain[ed] jurisdiction with respect to all other issues and matters in this case, including .

. . the determination of the holding or disposition of any funds which are determined in the Ancillary Adversary Proceedings to not be required to be disbursed to the State Treasurer by reason of the . . . Unclaimed Property Act.” L.F. 78-79. The Motion and Petitions and the Orders entered on July 20, 2001, in SC84210, SC84211, SC84212 and SC84213 are substantially similar.

On July 25, 2001, the Supreme Court assigned the Honorable Ward B. Stuckey as Special Judge in “In Re Ancillary Adversary Proceedings Questions, Case No. CV194-24CC.”

On July 25, 2001, the Attorney General filed a Petition in the Circuit Court for Petitioner Nancy Farmer against Judge Kinder, Judge Brown, this Respondent, Julie Smith (Respondent in SC84210), Elaine Healey (Respondent in SC84211) and Jackie Blackwell (Respondent in SC84212). Insofar as the funds in this case are concerned, in that Petition the Attorney General sought a mandatory injunction directing Judge Brown and Respondent Receiver to turn over the monies held by the Receiver and interest previously earned and an order directing Judge Brown and Respondent Morgan to pay penalties personally. L.F. 8 in SC84328.

The State Treasurer on August 20, 2001, filed a Motion to Vacate and Disqualify in the Ancillary Adversary Proceedings which requested that the July 20, 2001, Order be vacated and that Judges Kinder and Brown be disqualified. L.F. 81. On September 10, 2001, Cole County filed its Pleading in Response to Court Order in the Ancillary Adversary Proceedings, and on September 20, 2001, the Claims and Position of the Cole County Circuit Clerk were filed in the Ancillary Adversary Proceedings. L.F. 124-141.

On October 12, 2001, Respondent Morgan, the other Receivers, and the Trustee filed their Motion for Judgment on the Pleadings in the Ancillary Adversary Proceedings in this case and in the cases that are now on appeal to this Court as SC84210, SC84211, SC84212 and SC84328, as well

as in Case No. 01CV325409 which remains pending before Judge Stuckey in the Cole County Circuit Court. L.F. 144. That Motion incorporated by reference the pleadings and motions in the other cases into this case, including Respondent Morgan's First Amended Motions in Case No. 01CV324800 (L.F. 50 in SC84328).

The State Treasurer's Motion to Vacate, the Motion for Judgment on the Pleadings of the Receivers and Trustee, a Motion for Judgment on the Pleadings by Judges Kinder and Brown in Case No. 01CV324800 (L.F. 36 in SC84328) and Judge Brown's Motion for Consolidation (L.F. 220 in SC84328) were all noticed for hearing on October 18, 2001, before Judge Stuckey.

On October 18, 2001, prior to the commencement of the hearing before Judge Stuckey, Respondent Morgan filed her Motion for Order Directing Hearing After the Conclusion of the Ancillary Adversary Proceedings to Consider Disposition of Funds. That Motion requests, if it be determined in the Ancillary Adversary Proceedings that the Court has authority to distribute the funds other than to the State Treasurer pursuant to the Unclaimed Property Act, the trial court to enter an order directing public notice of a hearing at which time interested persons could be heard re the disposition of the funds in this case. L.F. 437. On October 18, 2001, the State Treasurer filed her Objections to Various Motions (L.F. 258-265) and her Suggestions in Opposition to Various Motions (L.F. 154-257).

On October 18, 2001, a hearing was held before Judge Stuckey with respect to the Motions that had been noticed for hearing, and the Motions (except for the Motion to Consolidate, which was withdrawn) were taken under advisement. L.F. 273.

Legal Aid of Western Missouri, Legal Services of Eastern Missouri and Mid-Missouri Legal Services later appeared as *Amici Curiae* and submitted Suggestions (L.F. 446, 604) and an Appendix of Selected Cases (L.F. 460).

On November 27, 2001, Judge Stuckey entered his Order and Judgment. Appendix A at A-1.

POINTS RELIED ON

I.

The trial court did not err as asserted in Appellant’s Points I through X inasmuch as the State Treasurer had and has no authority or standing to collect unclaimed property or administer the Uniform Disposition of Unclaimed Property Act because those are duties imposed by statute which cannot constitutionally be imposed upon the State Treasurer because of the provisions of Article IV, Section 15, Missouri Constitution, prohibiting the imposition of any duty by law which is not related to the “receipt, investment, custody and disbursement of state funds and funds received from the United States government” and, alternatively, because the statutes imposing collection and administrative duties under said Act were enacted in violation of the “single subject” and “clear title” provisions of Article III, Section 23, Missouri Constitution.

Cases

Board of Public Buildings v. Crowe, 363 S.W.2d 598 (Mo. banc 1962)

Director of Revenue v. State Auditor, 511 S.W.2d 779 (Mo. 1974)

Carmack v. Director, Department of Agriculture, 945 S.W.2d 596 (Mo. banc 1997)

Other Authorities

Article IV, Section 15, 1945 Missouri Constitution

Debates, Missouri Constitutional Convention – June 1944

Article IV, Sections 13, 14 and 22, 1945 Missouri Constitution

Article IV, Section 15, Missouri Constitution, as amended in 1986

Article III, Section 23, Missouri Constitution

Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for

House Bill No. 566, 87th General Assembly, First Regular Session

Sections 447.575, 447.532.1, 447.503(7), 447.539, 447.543 and 447.517, RSMo 2000

Opinion No. 110 of Attorney General Danforth, January 12, 1970

II.

The trial court did not err as asserted in Appellant's Points I through X because the Cole County Circuit Court has the authority to make a disposition of the funds (including interest thereon) in this case even if *arguendo* the State Treasurer has the authority to assert claims and collect unclaimed property pursuant to the Uniform Disposition of Unclaimed Property Act.

Cases

State Tax Commission v. Administrative Hearing Commission, 641 S.W.2d 69 (Mo. banc 1982)

Van Gemert v. Boeing Company, 739 F.2d 730 (2nd Cir. 1984)

State v. Levi Strauss & Co., 715 P.2d 564 (Cal. Bank 1986)

Friar v. Vanguard Holding Corp., 509 N.Y.S.2d 374 (N.Y. App. Div. 1986)

Other Authorities

Article V, Sections 1, Missouri Constitution

Article V, Section 14, Missouri Constitution

Article V, Sections 3, 4 and 8, Missouri Constitution

Article II, Section 1, Missouri Constitution

Section 447.532, RSMo 2000

Kevin M. Forde, *What Can A Court Do With Leftover Class Action Funds? Almost Anything!*”, 35 Judges Journal 19 (Summer 1996, American Bar Association)

III.

The trial court did not err as asserted in Appellant’s Points I through X because the Appellant State Treasurer is not in a position to make any claim to the funds in this case pursuant to the Uniform Disposition of Unclaimed Property Act.

Cases

State ex rel. Eagleton v. Champ, 393 S.W.2d 516 (Mo. banc 1965)

Other Authorities

Section 447.532.1, RSMo 2000

Section 447.503(7), RSMo 2000

IV.

The trial court did not err as asserted in Appellant’s Point III inasmuch as interest upon the funds in this case may be used and disbursed as provided in the Orders Appointing Receiver and in Section 483.310.2, RSMo.

Other Authorities

Section 483.310, RSMo 2000

V.

The trial court did not err as asserted in Appellant's Point IV inasmuch as the Motion for Judgment on the Pleadings incorporated other pleadings and motions, that Motion could be considered as a motion to dismiss and the trial court could properly conclude that the State Treasurer could not assert a claim to the funds or had not properly asserted a claim to the funds.

Cases

Angelo v. City of Hazelwood, 810 S.W.2d 706 (Mo. App. E.D. 1991)

VI.

The trial court did not err as asserted in Appellant's Points V, VI, VII, VIII, IX and X inasmuch as the Cole County Circuit Court had and continues to have jurisdiction over the funds in this case, any claim to the funds held in this case must be asserted in this case, the Circuit Court has the authority to require persons claiming funds held in this case to appear and show their entitlement to the funds, the Appellant was properly served with the July 20, 2001, Order and the Motion and Petition, and the Appellant is not entitled to any order of disqualification.

Cases

State ex rel. Sullivan v. Reynolds, 107 S.W. 487 (Mo. banc 1907)

Brady v. Ansehl, 787 S.W.2d 823 (Mo. App. E.D. 1990)

Robin Farms, Inc. v. Bartholomew, 989 S.W.2d 238 (Mo. App. W.D. 1999)

State ex rel. Gleason v. Rickhoff, 541 S.W.2d 47 (Mo. App. E.D. 1977)

Other Authorities

Supreme Court Rule 66.02

Supreme Court Rule 52.07

Supreme Court Rule 54.01

Supreme Court Rule 44.01(d)

ARGUMENT

I.

The trial court did not err as asserted in Appellant’s Points I through X inasmuch as the State Treasurer had and has no authority or standing to collect unclaimed property or administer the Uniform Disposition of Unclaimed Property Act because those are duties imposed by statute which cannot constitutionally be imposed upon the State Treasurer because of the provisions of Article IV, Section 15, Missouri Constitution, prohibiting the imposition of any duty by law which is not related to the “receipt, investment, custody and disbursement of state funds and funds received from the United States government” and, alternatively, because the statutes imposing collection and administrative duties under said Act were enacted in violation of the “single subject” and “clear title” provisions of Article III, Section 23, Missouri Constitution.

Respondent Morgan adopts by reference as her arguments for this Point I the arguments set forth by Respondent Smith in Point I of her Brief in SC84210, Point I in that Brief being identical to Point I in this Brief.

Respondent Morgan does, however, set forth here the authorities which are set forth in the Brief of Respondent Smith in SC84210:

Article IV, § 15, 1945 Missouri Constitution

Debates, Missouri Constitutional Convention, June 1944

Article IV, § 13, 1945 Missouri Constitution

Article IV, § 14, 1945 Missouri Constitution

Article IV, § 22, 1945 Missouri Constitution

Article IV, § 15, Current Missouri Constitution

Article III, § 23, Current Missouri Constitution

Article III, § 36, Current Missouri Constitution

Article IV, § 36(a), Current Missouri Constitution

Article X, § 15, 1875 Missouri Constitution

Article X, § 17(1), Current Missouri Constitution

Uniform Disposition of Unclaimed Property Act, Sections 447.500 to 447.595,

RSMo

Board of Public Buildings v. Crowe, 363 S.W.2d 598 (Mo. banc 1962)

Blydenburg v. David, 413 S.W.2d 284 (Mo. banc 1967)

Opinion No. 110 of Attorney General Danforth, January 12, 1970

Director of Revenue v. State Auditor, 511 S.W.2d 779 (Mo. 1974)

Buechner v. Bond, 650 S.W.2d 611 (Mo. banc 1983)

*State ex rel. Thompson v. Board of Regents for Northeast Missouri State
Teachers'*

College, 264 S.W. 698 (Mo. banc 1924)

Howell v. Division of Employment Security, 215 S.W.2d 467 (Mo. 1948)

Conference Committee Substitute for Senate Committee Substitute for

House Committee Substitute for House Bill No. 566, 87th General

Assembly, First Regular Session

Carmack v. Director, Department of Agriculture, 945 S.W.2d 956

(Mo. banc 1997)

Home Builders Association of St. Louis v. State, Case No. SC83863,

2002 WL 1051989, ____ S.W.3d ____ (Mo. banc May 28, 2002)

Kelly v. Hanson, 931 S.W.2d 816 (Mo. App. W.D. 1996)

State v. Planned Parenthood, 66 S.W.3d 16 (Mo. banc 2002)

Wilkes v. The King, (1768) Wilm. at pp. 327

Cooley, “Predecessors of the Federal Attorney General: The Attorney General

in England and the American Colonies”, *The American Journal of Legal*

History, Vol. 2, pages 304, 307 (1958)

Section 447.503(7), RSMo 2000

Section 447.517, RSMo 2000

Section 447.532.1, RSMo 2000

Section 447.539, RSMo 2000

Section 447.543, RSMo 2000

Section 447.575, RSMo 2000

House Bill No. 1088, 82nd General Assembly, Second Regular Session

Section 100.260, RSMo 2000

Section 104.150, RSMo 2000

Section 104.440, RSMo 2000

Sections 228.290 through 288.330, RSMo 2000

Supreme Court Rule 6.04

Supreme Court Rule 7

Supreme Court Rule 7.02

II.

The trial court did not err as asserted in Appellant's Points I through X because the Cole County Circuit Court has the authority to make a disposition of the funds (including interest thereon) in this case even if *arguendo* the State Treasurer has the authority to assert claims and collect unclaimed property pursuant to the Uniform Disposition of Unclaimed Property Act.

Respondent Morgan adopts by reference as her argument for this Point II the arguments set forth by Respondent Smith in Point II of her Brief in SC84210, Point II in that Brief being identical to Point I in this Brief.

For the additional reasons discussed under Point II of this Respondent's Argument, *supra*, the Appellant is barred from any relief here.

In addition to the reasons and arguments set forth in the Brief of Respondent Smith in SC84210, the facts in this case reflect additional reasons why relief cannot be granted to the Respondent. We note those briefly.

The Record reflects that in addition to the participation of the Office of Public Counsel in this consolidated case, the State of Missouri was an Intervenor in the case, was represented by the Attorney General and actively participated in the case, including the filing of a brief before Judge Brown. L.F. 8-9. The record reflects that filings by Southwestern Bell up through and including its Motion to Close Receivership on January 22, 1996, were transmitted to counsel for the parties, including the State of

Missouri. See Statement of Facts. The Motion to Close Receivership requested that the first receivership be closed and that the funds be paid “into the general accounts of the Circuit Court”. L.F. 398. All of the funds herein in question, except for subsequent interest, were involved in the \$294,192.59 held in the first receivership. Judge Brown on January 26, 1996, entered his “Order Closing Receivership and Transmitting Funds Into General Accounts of the Circuit Clerk”. L.F. 48 and 400. That Order, in effect, “docked” all possible claims of any person or entity to the funds in this case, with the exception of only “requests for reimbursement” for customer refund drafts which Southwestern Bell honored during 1996. L.F. 48-49 and 400-401. The January 26, 1996, Order Closing Receivership and Transferring Funds Into the General Accounts of the Circuit Clerk was transmitted to the parties to the case at that time, including to the Office of Public Counsel and to the Attorney General for the State of Missouri. L.F. 400-403. The funds were transferred to the Circuit Clerk with Judge Brown’s approval on January 26, 1996. L.F. 56. The second receivership was then created and Respondent Sharon Morgan was appointed as Receiver by Order Transferring Funds and Appointing receiver of January 26, 1996. L.F. 50, Appendix C to this Brief at A-13. Respondent Morgan then took possession of the funds as Receiver.

Although the State of Missouri was a party to these proceedings in January of 1996 and was represented by the present Attorney General, the Attorney General took no action to seek any modification of the January 1996 Orders in Circuit Court, did not initiate any original writ proceedings with respect to those Orders and did not then or at any time thereafter attempt any appeal with respect to the January 1996 Orders. Consequently, neither the State of Missouri nor any of its Executive Officers, including the Respondent State Treasurer, can now take issue with those January 1996 Orders or assert any claims to the funds.

Respondent Morgan does, however, set forth here the authorities which are set forth in the Brief of Respondent Smith in SC84210:

Article II, § 1, Current Missouri Constitution

Article V, § 1, Current Missouri Constitution

Article V, § 14, Current Missouri Constitution

Article V, § 3, Current Missouri Constitution

Article V, § 4, Current Missouri Constitution

Article V, § 8, Current Missouri Constitution

State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. banc 1970)

State Auditor v. Joint Committee on Legislative Research, 956 S.W.2d 228

(Mo. banc 1997)

Missouri Coalition for the Environment v. Joint Committee on Administrative

Rules, 948 S.W.2d 125 (Mo. banc 1997)

State Tax Commission v. Administrative Hearing Commission, 641 S.W.2d 69

(Mo. banc 1982)

United States v. Morgan, 307 U.S. 183 (1937)

Market Street Railway Co. v. Railroad Commission, 171 P.2d 875

(Cal. Bank 1946)

State ex rel. South Missouri Pine Lumber Co. v. Dearing, 79 S.W. 454

(Mo. banc 1904)

State ex rel. Hampe v. Ittner, 263 S.W.2d 158 (Mo. 1924)

Supreme Court Rule 68.02

Van Gemert v. Boeing Company, 739 F.2d 730 (2nd Cir. 1984)

Friar v. Vanguard Holding Corp., 509 N.Y.S.2d 374 (N.Y. App. Div. 1986)

Kevin M. Forde, “*What Can A Court Do With Leftover Class Action Funds?*

Almost Anything!”, 35 Judges’ Journal 19 (Summer 1996, American Bar

Association). A copy of this article is set forth in Appendix B of this

Brief at A-05.

Powell v. Georgia-Pacific Corp., 119 F.3d 703 (8th Cir. 1997)

Democratic Central Committee of the District of Columbia v. Washington

Metropolitan Area Transit Commission, 84 F.3d 451 (D.C. Cir. 1996)

Houck v. Folding Carton Administration Committee, 881 F.2d 494 (7th Cir.

1989), *on remand sub nom. In Re Folding Carton Antitrust Litigation*,

No. MDL 250, 1991 WL 32857 (N.D. Ill. March 6, 1991)

Jones v. National Distillers, 56 F.Supp.2d 355 (S.D. N.Y. 1999)

Northern Natural Gas Co. v. Federal Power Commission, 225 F.2d 886

(8th Cir. 1954)

In Re Wells Fargo Securities Litigation, 991 F.Supp. 1193 (N.D. Cal. 1998)

State v. Levi Strauss & Co., 715 P.2d 564 (Cal. Bank 1986)

In Re Miamisburg Train Derailment Litigation, 635 N.E.2d 46 (Ohio App. 1993)

Uniform Disposition of Unclaimed Property Act, Sections 447.500 to

447.595, RSMo

28 U.S.C. § 2041

28 U.S.C. § 2042

Section 447.532, RSMo 2000

III.

The trial court did not err as asserted in Appellant's Points I through X because the Appellant State Treasurer is not in a position to make any claim to the funds in this case pursuant to the Uniform Disposition of Unclaimed Property Act.

Respondent Morgan adopts by reference as her arguments for Point III the arguments set forth by Respondent Smith in Point III of her Brief in SC84210, Point III in that Brief being identical to Point III in this Brief.

Respondent Morgan does, however, set forth here the authorities which are set forth with respect to Point III in the Brief of Respondent Smith in SC84210:

Uniform Disposition of Unclaimed Property Act, Sections 447.500 to

447.595, RSMo

Section 447.503(7), RSMo 2000

Section 447.532.1, RSMo 2000

House Bill No. 1088, 82nd General Assembly, Second Regular Session

State ex rel. Eagleton v. Champ, 393 S.W.2d 516 (Mo. banc 1965)

IV.

The trial court did not err as asserted in Appellant's Point III inasmuch as interest upon the funds in this case may be used and disbursed as provided in the Orders Appointing Receiver and in Section 483.310.2, RSMo.

Respondent Morgan adopts by referenced as her arguments for this Point IV the arguments set forth in Respondent Smith in Point IV of her Brief in SC84210, Point IV in that Brief being substantially similar to Point IV in this Brief.

Respondent Morgan does, however, set forth here the authority which is set forth with respect to Point IV in the Brief of Respondent Smith in SC84210:

Section 483.310, RSMo

V.

The trial court did not err as asserted in Appellant's Point IV inasmuch as the Motion for Judgment on the Pleadings incorporated other pleadings and motions, that Motion could be considered as a motion to dismiss and the trial court could properly conclude that the State Treasurer could not assert a claim to the funds or had not properly asserted a claim to the funds.

Respondent Morgan adopts by reference as her arguments for this Point V the arguments set forth by Respondent Smith with respect to Point V of her Brief in SC84210, Point V in that Brief being identical to Point V in this Brief.

Respondent Morgan does, however, set forth here the authorities which are set forth with

respect to Point V in the Brief of Respondent Smith in SC84210:

Angelo v. City of Hazelwood, 810 S.W.2d 706 (Mo. App. E.D. 1991)

VI.

The trial court did not err as asserted in Appellant's Points V, VI, VII, VIII, IX and X inasmuch as the Cole County Circuit Court had and continues to have jurisdiction over the funds in this case, any claim to the funds held in this case must be asserted in this case, the Circuit Court has the authority to require persons claiming funds held in this case to appear and show their entitlement to the funds, the Appellant was properly served with the July 20, 2001, Order and the Motion and Petition, and the Appellant is not entitled to any order of disqualification.

Respondent Morgan adopts by reference as her arguments for this Point VI the arguments set forth by Respondent Smith with respect to Point VI of her Brief in SC84210, Point VI in that Brief being identical to Point VI in this Brief.

Respondent Morgan does, however, set forth here the authorities which are set forth with respect to Point VI in the Brief of Respondent Smith in SC84210:

State ex rel. Sullivan v. Reynolds, 107 S.W. 487 (Mo. banc 1907)

Neun v. Blackstone Building & Loan Association, 50 S.W. 436 (Mo. 1899)

Supreme Court Rule 66.02

Supreme Court Rule 52.07

Crist v. ISC Financial Corp., 752 S.W.2d 489 (Mo. App. W.D. 1988)

Brady v. Ansehl, 787 S.W.2d 823 (Mo. App. E.D. 1990)

Roosevelt Federal Savings & Loan Association v. First National Bank of Clayton,
614 S.W.2d 289 (Mo. App. E.D. 1981)

Supreme Court Rule 54.01

Supreme Court Rule 54.02

American Refractories Co. v. Combustion Controls, 70 S.W.3d 660
(Mo. App. S.D. 2002)

State ex rel. Fischer v. Public Service Commission, 670 S.W.2d 24
(Mo. App. W.D. 1984)

State on Inf. of Attorney General v. Arkansas Lumber Co., 190 S.W. 894
(Mo. banc 1916))

Ainsworth v. Old Security Life Insurance Co., 685 S.W.2d 583
(Mo. App. W.D. 1985)

In Re Transit Casualty Co. in Receivership, Pulitzer Publishing Co. v.

Transit Casualty Co. in Receivership, 43 S.W.3d 293 (Mo. banc 2001)

Clay v. Eagle Reciprocal Exchange, 368 S.W.2d 344 (Mo. 1963)

In Re Transit Casualty Co. in Receivership v. William Blair Realty

Partners, II, v. Transit Casualty Co. in Receivership, 900 S.W.2d 671
(Mo. App. W.D. 1995)

Article II, § 1, Current Missouri Constitution

Supreme Court Rule 51.07

Supreme Court Rule 2, Canon 3

Article V, § 4, Current Missouri Constitution

State ex rel. Buchanan v. Jensen, 379 S.W.2d 529 (Mo. banc 1964)

Robin Farms, Inc. v. Bartholomew, 989 S.W.2d 238 (Mo. App. W.D. 1999)

State v. Kinder, 942 S.W.2d 313 (Mo. banc 1996)

Supreme Court Rule 44.01(d)

State ex rel. Gleason v. Rickhoff, 541 S.W.2d 47 (Mo. App. E.D. 1977)

Jenkins v. Jenkins, 784 S.W.2d 640 (Mo. App. W.D. 1990)

CONCLUSION

For the reasons set forth in the Brief of Respondent Smith in SC84210 and hereinabove, the Order and Judgment entered by Judge Stuckey on November 27, 2001, should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
WITH RULE 84.06

The undersigned certifies:

1. That this Brief complies with Rule 84.06; and
2. That this Brief contains 10,704 words according to the word count feature of Microsoft Word Version 1997 software with which it was prepared.
3. That the disks accompanying this Brief have been scanned for viruses, and to the best of his knowledge are virus-free.
4. That this Brief meets the standards set out in Mo. Civil Rule 55.03.

Alex Bartlett

CERTIFICATE OF SERVICE

The undersigned does hereby certify that copies of the foregoing Brief along with a double-sided, high-density IBM PC compatible disk with the text of the Brief were hand-delivered or mailed via United States Mail, postage prepaid, on July 18, 2002, to Mr. James McAdams, Office of the Missouri Attorney General, P. O. Box 899, Jefferson City, MO 65102, attorney for Appellant Nancy Farmer, to Henry T. Herschel, Blitz, Bardgett & Deutsch, L.C., 308 East High Street, Suite 301, Jefferson City, MO 65101, attorney for Respondent Cole County, and to J. Kent Lowry, Armstrong, Teasdale, LLP, 3405 West Truman Boulevard, Jefferson City, MO 65109, attorney for Respondent Debbie Cheshire.

Alex Bartlett